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FISCAL IMPACT STATEMENT

LS 6843

BILL NUMBER: SB 335

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 28, 2008

SUBJECT: Illegal Alien Matters.

FIRST AUTHOR: Sen. Delph

FIRST SPONSOR: Rep. Tincher

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill does the following:

State Police & Local Law Enforcement Matters- This bill requires the Superintendent of the State Police Department (SPD) to: (1) negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate law enforcement officers to be trained under the memorandum. It requires: (1) the Superintendent and Governor, unless otherwise required by the applicable federal agency, to sign the memorandum on behalf of the state; and (2) the State Police Department to apply for federal funding, as available, for the costs associated with the training. The bill also provides that a law enforcement officer certified as trained may enforce the federal immigration and customs laws.

Prohibition of Employment of Unauthorized Aliens- This bill prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. It exempts certain utilities, hospitals, nonprofit organizations, and certain emergency medical transporters from this provision.

Attorney General Provisions- Subject to availability of funds, this bill authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney under certain conditions; and (4) maintain certain records of violation orders.

County Prosecutor Provision- This bill authorizes a prosecuting attorney to file a civil action against an employer for knowingly hiring an unauthorized alien in the county where the alien is employed.

Trial Court Provisions- This bill also authorizes a court to: (1) hold a hearing on an expedited basis; (2) if an employer knowingly employs an unauthorized alien, order the employer to terminate the employment of unauthorized aliens, order the employer to file a sworn affidavit, and place the employer on probation for three years; and (3) order agencies to suspend all licenses held by the employer for the operation of the business location until the affidavit is filed, if the employer fails to file a sworn affidavit.

It also provides that a court may: (1) suspend the licenses of an employer for a second violation not later than 10 years after the date of the initial violation; and (2) revoke all licenses of the employer for a third violation not later than 10 years after the initial violation.

The bill provides that a trier of fact may consider only the federal government's verification or status information in determining whether an individual is an unauthorized alien. This bill prohibits a prosecuting attorney from filing an action against an employer that verifies the employment authorization of an employed individual through the pilot program. It establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. The bill provides that the suspension or revocation of a license does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages.

Prohibition of Local Ordinances, Resolutions, and Rules- The bill also prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual.

Legal Recourse Regarding Prohibition- The bill allows a person to bring an action to compel a governmental body to comply with the prohibition.

Public Contracts and Unauthorized Aliens- The bill also prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. It provides that: (1) a state agency or political subdivision may terminate a public contract for services if the contractor providing the services employs or contracts with unauthorized aliens unless the state or political subdivision determines that terminating the contract would be detrimental to the public interest or public property; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. This bill allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

Penalty Provisions- The bill makes it a Class B misdemeanor to file complaint, knowing the complaint is false or frivolous, with the Attorney General or a prosecuting attorney. It makes it a: (1) Class A misdemeanor to transport or move; and (2) Class A misdemeanor to conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. This bill exempts from these criminal provisions, certain religious, health care, and legal services providers, and spouses from the criminal provisions. The bill also makes these offenses a Class D felony (Class C felony for subsequent offenses): (1) for a subsequent offense; or (2) if the offense involves more than five aliens.

Department of Workforce Development- This bill requires the Department of Workforce Development (DWD) to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program.

Effective Date: July 1, 2008; July 1, 2009; October 1, 2009.

Explanation of State Expenditures: *State Police & Local Law Enforcement Matters-* The SPD would experience an increase in administrative time to negotiate the terms of the pilot program memorandum. The SPD would also be required to apply for funding from the federal government to cover the costs to appoint local law enforcement officers to carry out the program. The SPD's expenditures could increase to cover the cost of training, if funds are not received from the federal government and the training program is still carried out.

(Revised) *Department of Workforce Development:* The bill requires DWD to verify the lawful presence of individuals that apply for unemployment compensation benefits in accordance with federal law.

(Revised) *Attorney General Provisions-* The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or the U.S. Immigration and Customs Enforcement (ICE).

Under the provisions of this bill, the AG is required to maintain all court orders dealing with business license suspension or revocation of offending employers, make these orders available on the AG's website, and establish and maintain a database of violators.

The legislation also stipulates that the AG shall notify the U.S. Immigration and Customs Enforcement if an employer has knowingly employed an unauthorized alien. The AG may notify both local law enforcement officers and the prosecuting attorney in the county in which the illegal alien was employed if the AG determines that (1) the employer knowingly employed an unauthorized alien, and (2) any defense to knowingly employing an unauthorized alien specified in the legislation does not apply.

Since the bill applies only to employees (1) who work more than 1,500 hours in a 12-month period (approximately 30 hours per week); (2) who are hired after September 30, 2009; and (3) since the AG is authorized, but not required, to investigate complaints; and (4) the AG's responsibilities are subject to the availability of funding, the fiscal impact should be minimal initially, but potentially becoming significant over time. Any funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of and actions taken under this bill will depend upon legislative and administrative decisions.

Public Contracts and Unauthorized Aliens- If private contractors were required to take additional time and expense to verify that each employee involved with a state contract (including subcontractors employed by the contractor) is not an unauthorized alien, the expense of such investigation would likely be passed on to the state during price negotiations of future contracts.

Penalty Provisions- A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost

of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately 10 months, and for all Class C felony offenders is approximately 2 years.

Background Information-

Attorney General- The AG's General Fund appropriation is \$15.4 M for FY 2008. The AG did not revert any of their General Fund appropriation at the close of FY 2007. As of the beginning of FY 2008, the AG had 31 vacancies worth \$311,302 in salary.

State Police- Over the current biennium, the State Police Department will receive approximately \$20.8 M in federal funds for various programs, including two Homeland Security programs. The SPD reverted approximately \$185,000 to the state General Fund at the close of FY 2007.

Verification Programs- There are two programs that are in common usage with verification of an employee's legal residency. They are called the E-Verify and SAVE programs. The E-Verify program is currently free to all online registered users. SAVE automatically charges a minimum monthly service fee of \$25 for verifications or \$300 per year.

Unauthorized Aliens- As of 2005, based on the PEW Hispanic Center's estimate, there were between 55,000 and 85,000 unauthorized aliens in Indiana, or about 0.5% to 0.75% of the nation's estimated 11.5 million unauthorized aliens. There were an estimated 128,000 authorized immigrants admitted to the United States during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 and 2006.

Explanation of State Revenues: *Public Contracts and Unauthorized Aliens-* The state could collect damages from a contractor if a contract were terminated because of a breach of contract for reasons specified by the bill. Contractors would be liable for actual damages if the contract were terminated by the state.

Penalty Provisions- If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000, and \$10,000 for a Class C or D felony. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *County Prosecutor and Trial Court Provisions-* (Revised) If the AG investigates and determines that an employer knowingly hired an unauthorized alien and defenses established in the legislation do not apply, the AG can notify the appropriate county prosecuting attorney. The prosecuting attorney may file an action against the employer in the local court. Depending on the volume of complaints forwarded by the AG, local prosecuting attorneys and courts may require additional administrative and trial time for cases involving unauthorized alien employment.

(Revised) *Local Law Enforcement*- Local law enforcement agencies may receive reports concerning employment of unauthorized aliens to the extent that the AG (1) investigates filed complaints, (2) determines complaints are substantiated, (3) determines that defenses to employing unauthorized aliens do not apply, and (4) decides to notify local law enforcement agencies. Decisions on how to process notifications received from the AG will impact the workload of local law enforcement. Actual increase in workload is indeterminable.

Local Courts of Jurisdiction- Caseload of local courts of jurisdiction may increase to the extent that (1) actions are filed against businesses that employ illegal aliens, (2) there are additional court cases regarding offenses related to illegal aliens, and (3) individuals file action against government entities that violate the provisions of this legislation. The workload of courts and prosecuting attorneys would be more affected in counties with high volume of criminal cases. Depending on the type of monitoring and supervision that the court could place on an offender, the court's probation department may also need to increase the number of probation officers that it employs.

Public Contracts and Unauthorized Aliens- There could be increased costs to local units of government to defend against an action filed by a contractor.

Legal Recourse Regarding Prohibition- Political subdivisions could require the services of an attorney in order to defend against an action filed by a person claiming that the government is not enforcing a prohibition of employment of illegal aliens.

Penalty Provisions- A Class A misdemeanor is punishable by up to one year in jail. A Class C misdemeanor is punishable by up to 60 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *State Police & Local Law Enforcement Matters*- Local law enforcement agencies could receive federal funding through the state if local police officers were to participate in the immigration enforcement pilot program. Any funds received would depend on any monetary agreement reached between the state and federal government.

Penalty Provisions- If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: SPD; SDH; AG; DOC.

Local Agencies Affected: Local law enforcement, county prosecutors, trial courts.

Information Sources: PEW Hispanic Center estimates of unauthorized aliens in Indiana and the U.S.; *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2008*; Brian Carnes, Legislative Liaison, SDH; Matt Light, Legislative Liaison, Office of the Attorney General; Indiana Sheriffs' Association; DOC.

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